IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.2249 OF 2005

Shri Kiran Bapu Phalle : Petitioner

(Orig. Deft. No.2)

V/s.

Dr.Shivajirao Aappaji Patil & Ors. : Respondents

(No.1 Orig.Plaintiff and

No.2A to 21 Orig. Deft.No.2)

...

Mr.A.M.Kulkarni for the petitioner.

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CORAM : S.A. BOBDE, J.

June 20, 2005.

P.C.:

1. After having heard the learned counsel for the petitioner for sometime, it appears that the only apprehension of the petitioner is that the Commissioner who has summoned as a Court witness will be subjected to cross-examination without having been examined. Admittedly, the Commissioner i.e. the DLR has filed a report which is marked at exh.69. By virtue of the provisions of Order 26 Rule 10, sub-rule (2), any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters

referred to him or mentioned in his report, or as to his report. The learned counsel for the petitioner submits that the Commissioner cannot be directly cross-examined. There is no reason to assume that the Court will violate section 138 of the Indian Evidence Act, 1872, which reads as follows:-

> **"138. Order of examinations.**-- Witness shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.
>
> The examination and cross-examination must relate to relevant facts but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.
>
> **Direction of re-examination.**-- The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may

further cross-examine upon that matter."

2. In the circumstances, the trial Court may proceed to allow examination of the Commissioner, in accordance with law. There is no reason to interfere with the summons which is impugned. The petition is dismissed.

S.A. BOBDE, J.